THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.26372 of 2005

Date: 03.01.2006

Between:

J.Papaiah.

.. PETITIONER

AND

A.P.State Road Transport Corporation and another.

.. RESPONDENTS

ORDER:

The petitioner is employed as a Driver in the Avanigadda Depot of APSRTC. Through proceedings, dated 28.09.2005, the 2nd respondent ordered that the petitioner be placed under long leave for a period of one year i.e., up to 03.07.2006. Reference is made to a Circular, dated 21.04.1990, issued by the Vic-Chairman-cum-Managing Director, 1st respondent herein. The petitioner states that he is medically fit to discharge the functions of Driver and despite the same, the 2nd respondent passed the impugned order placing him under long leave. He alleges that there is no provision in the Service Regulations, which enables the 2nd respondent to place him under forced leave.

The learned Standing Counsel for the respondents, on instructions, submits that the medical examination of the petitioner revealed that the petitioner is suffering from mental illness and the 2nd respondent felt that it is not at all safe to entrust the petitioner with the duties of a Driver.

A perusal of the impugned order discloses that the 2nd respondent placed the petitioner under leave for a period of one year. Reference is made to a Circular dated 21.04.1990 issued by the Vice-Chairman-cum-Managing Director. The learned Standing Counsel for the respondents submits that the Circular, dated 21.04.1990, is no longer in force. The 2nd respondent could have passed the impugned order, if only there exists a provision under the relevant Service Regulations, which enables him to place the petitioner under forced leave. In fact, such a course of action is unknown to law. If an employee is found to be medically unfit, he has to be either retired from service duly following the procedure or provided with an alternative employment or extended the benefits in lieu thereof. On the other hand, if the employee is guilty of any misconduct, he can be placed under suspension and thereafter, punishment can be imposed after holding the departmental enquiry. Placing the employee under forced leave would be worse than suspending him. On the one hand, the employee would be in service and on the other, he would not be paid any emoluments whatsoever. If a person, who is accused of misconduct, would be entitled to be paid subsistence allowance, placing an employee under forced leave would deprive him of total salary. Viewed from any angle, the action of the respondents cannot be sustained.

Hence, the Writ Petition is allowed, and the impugned order is set aside. The respondents shall pay the salary to the petitioner, which is denied to him on the basis of the impugned order. It shall, however, be open to the respondents to take such action, as is open to them in law, in case, they find that the petitioner cannot discharge the normal duties. There shall be no order as to costs.

_____

03.01.2006

Jsu